

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re B.A., a Person Coming Under the Juvenile Court
Law.

C078857

THE PEOPLE,

(Super. Ct. No. 70576)

Plaintiff and Respondent,

v.

B.A.,

Defendant and Appellant.

B.A. (the minor) appeals from a dispositional order finding that she violated probation and requiring her to complete the remainder of her suspended sentence. She argues that insufficient evidence supports the trial court's finding that she violated probation by failing to complete her counseling program. Disagreeing, we shall affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2014, a Welfare and Institutions Code section 602 petition was filed in Alameda County alleging that the minor violated Penal Code sections 653.22 (count 1, loitering with intent to commit prostitution) and 647, subdivision (b) (count 2, disorderly conduct by agreeing to engage in prostitution), both misdemeanors. The minor admitted an amended allegation of disturbing the peace (Pen. Code, § 415, subd. (2)) and the remaining allegation against her (count 2) was dismissed. Shortly thereafter, the matter was transferred to San Joaquin County (where she lived) for disposition. She was adjudged a ward of the court and ordered to complete 30 days in juvenile hall with 30 days credit and, among other conditions, to complete a counseling program. Two weeks later, she violated probation by failing to keep the probation officer informed of her whereabouts and failing to complete counseling. She was continued as a ward of the court and ordered to complete 60 days in juvenile hall, but ordered released to FACESS (Freeing American Children from Exploitation and Sexual Slavery) counseling program (“or some other [counseling] program that’s appropriate”) upon acceptance with the remaining time stayed. The minor was transferred to FACESS a week later.

A petition filed March 3, 2015, alleged the minor violated probation by failing to complete the FACESS program by not following the rules, having inappropriate relationships, making a shank, and threatening students.

A contested hearing was held on March 16, 2015. The minor’s mother testified at the hearing that she spoke with the minor every Friday for an hour on the telephone, and visited one weekend a month. The minor had informed mother that she had engaged in inappropriate behavior with another girl in the program, that she expressed remorse, that she had had a “plastic knife,” that she had conflicts with other students, and that one time, she walked away from the program into the woods to “cool off,” knowing that it was against the rules to do so. In February 2015, the program contacted mother to pick up the

minor who was being discharged because she was not a good fit based on her conduct, but mother was told that she may be able to return at a later date.

The probation officer testified that she received a notice from FACESS that the minor was being terminated from the program because she had participated in inappropriate relationships with other students, threatened other students, possessed a “shank,” and wandered off into the woods.

The prosecution also introduced the letter from FACESS case manager Stacy Dugbartey. Dugbartey’s letter explained that the minor was being discharged from the program because she was not a “good fit,” having been disciplined for a sexual act with another student--which included knowingly exposing the other student to an STD--and for sexually pursuing other students despite being disciplined, for threatening a student with whom the minor did not get along, for making a shank out of plastic objects, for threatening to suffocate a student while she was sleeping, and for walking away from the program after she was disciplined. Dugbartey’s letter explained that the minor may be able to return to the program at some point but that “as of right now we need to place her somewhere else.”

The minor’s attorney did not present any evidence at the hearing.

The court found the allegation that the minor failed to complete the FACESS program to be true, continued the minor as a ward, and ordered her to complete the remaining 47 days of the 60 days previously ordered.

The minor filed a timely notice of appeal.

DISCUSSION

In reviewing the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the judgment, a rational trier of fact could have found the minor violated probation by failing to complete the counseling program. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

The minor does not dispute that she engaged in the conduct as alleged which resulted in her termination from the program. She contends however, that “although these facts may amount to reasons FACESS felt [she] was not a fit for its program, they certainly do not amount to a willful choice on her part not to complete the program.” She argues that there was no evidence that she “purposely engaged in any conduct *with the intent to be terminated* from the FACESS program” and that “there was no evidence . . . [she] *willfully intended that she be terminated* from the program.” (Italics added.)

Despite the minor’s protestations to the contrary, there is no requirement that the evidence show that the minor had the intent to be terminated from the FACESS program. Although we agree with the minor that “violations due to circumstances beyond the probationer’s control are not willful,” this is not the situation explained by the cases she cites in her argument. Her situation is not comparable to that of a probationer detained elsewhere by federal immigration authorities who did not willfully fail to attend a hearing (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295) or a probationer’s tardiness due to unforeseen circumstances rather than due to “irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court” (*People v. Zaring* (1992) 8 Cal.App.4th 362, 379).

Here, the juvenile court could reasonably find that the minor’s repeated and knowing violations of the counseling program’s rules constituted irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court. The minor concedes she repeatedly engaged in behaviors which ultimately caused her to be terminated from the counseling program. She was disciplined for multiple incidents of bad behavior before her discharge. Although she claims that her “behaviors were simply disability related and consistent with the traumatic condition she was dealing with when she arrived at the program,” she does not claim, nor can she, that any of these *acts of violating rules* which resulted in her termination from the program were involuntary or unintentional. Thus her failure to complete the FACESS program constituted a willful

violation of the terms and conditions of her probation. The trial court's decision is well-supported by the evidence in this regard.

DISPOSITION

The orders of the juvenile court are affirmed.

/s/
Duarte, J.

We concur:

/s/
Nicholson, Acting P. J.

/s/
Hoch, J.